

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4097 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

PATEL SADHNA JAYANTILAL

Versus

GUJARAT SECONDARY EDUCATION BOARD

Appearance:

MR HARDIK C RAWAL for Petitioner

Mr.Hasurkar for

MR AD OZA for Respondent No. 1

Mr.B.Y.Mankad, learned A.G.P. for respondent No.2.

MR AR THACKER for Respondent No. 3

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 07/07/1999

ORAL JUDGEMENT

Rule. Mr. Hasurkar waives service of rule on behalf of respondent No.1, Mr. Mankad waives service of rule on behalf of respondent No.2 and Mr.Thacker waives service of rule on behalf of respondent No.3. In the facts and circumstances of this case,the matter is taken

up for final decision.

I have heard learned counsel for both the sides and have also gone through the reply filed on behalf of the respondent No.1 and the Government Resolution issued by the Education Department on 3.5.99. There is no dispute that the petitioner herein was a student of 10th Standard, who appeared in March 1998 examination and failed in two subjects. There is no dispute that the petitioner again appeared in October 1998 examination, but passed only in one out of the two subjects in which she had failed earlier and she again failed in one of the two papers i.e. Mathematics. She was then to appear in the examination of March 1999 in only one paper of Mathematics. However she could not appear in this examination of March 1999 for reasons of ill health, for which sick Certificate had been duly submitted by her. Now she was about to appear in the examination to be held in October 1999, but the Board has abolished that Scheme of holding examinations in October 1999. Mr. Hasurkar has submitted that in terms of Regulation Nos.20, 21 and 22 of the Secondary Education Board, now, instead of the October 1999 examination, which had been abolished, the Board has decided to hold a supplementary examination in July 1999 and these examinations are to commence on 17.7.99. For this examination to be held in July 1999, the petitioner's application form has not been entertained on the ground that this supplementary examination to be held in July 1999 in terms of the amended Regulation 22 is only for those candidates, who have failed in one subject in the examination, which was held in March 1999 and whereas the petitioner had not appeared in March 1999 examination in the only paper of mathematics, in which she was otherwise required to appear, she cannot be allowed to take this supplementary examination. The argument raised by Mr. Hasurkar is that she has not failed in one subject, but she chose not to appear and, therefore, she is not entitled to appear in this supplementary examinations to be held in July 1999, which are being held instead of the examinations of October 1999, which was earlier prescribed and which has now been abolished.

I called upon the learned counsel for the Board to explain as to how this can be said to be a reasonable interpretation of amended Regulation No.22 and what is the rationale to make a classification between the student who had failed in one subject in March 1999 examination and another student who could not appear in that examination of March 1999 in one subject for reasons of ill health beyond her control and comprehension. Mr.

Hasurkar has made reference to the averments made in para 5 wherein it is stated that the Board had started to hold the examinations in July instead of October so as to enable the students failing in one subject to prosecute the higher studies in the same academic year, as otherwise even if the candidate clears the examination in October, such candidate cannot get admission in the next higher class. This reasoning, on the contrary, should be available in favour of the students, who were due to appear in March Examination, whether he fails in one subject or he is not able to appear in one subject in which he was otherwise required to appear. I find that there is no rationale behind this stand, which has been taken by the Board against the petitioner and it appears that it is simply doing violence and defeating the very object for which the amendment has been made in the Regulation No.22. There cannot be any reasonable classification between a student, who has appeared in one subject and a student, who could not appear in the only subject for reasons of his ill health. The object of the amendment in the Regulation was to enable the examinees of March examination, failing in only one subject, to appear in the supplementary examination in July 1999 so as to make it possible for them to prosecute the higher studies in the same academic year. I find that whether a student appears in an examination and fails or does not appear in that examination for reasons beyond his control and comprehension, the effect is the same that he does not clear that examination. Therefore, in the considered opinion of this Court, the differentiation, which is being made so as to prevent the petitioner from appearing in the supplementary examination to be held in July 1999, has no rationale and this interpretation runs contrary to the very object for which the amendment has been made and it amounts to doing violence to the pious object for which the amendment has been made in the Regulation. Any such amendment made in the Regulation for the benefit of the examinees of March 1999, the Board is supposed to make a reasonable construction so as to achieve the object for which the amendment is made and it cannot be interpreted so as to defeat the very object. Even otherwise such provisions have to be given construction, which may be beneficial to a student, whether he is failing after appearing in the examination or whether he was not able to appear in that examination for reasons of ill health. It is a dismal fact that instead of taking a compassionate view in the spirit of the amendment, an entirely reverse interpretation has been taken. In the considered opinion of this court the petitioner is entitled to appear in the supplementary examination to be held in July 1999 in one of the subjects i.e.

Mathematics which she has failed to clear and could not appear in March 1999 examination on the ground of sickness.

This Special Civil Application accordingly succeeds. The respondents are directed to allow the petitioner to appear in the supplementary examinations to be held in July 1999, which are to commence on 17.7.99 and it is further directed that the petitioner's application form shall be entertained for the said examination and she will be allowed to appear in the subject of Mathematics and if any formalities are required to be done for that purpose, the same shall be got completed immediately. Rule is made absolute. No order as to costs. Direct service is permitted.